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**DEC 23 2003**

**OFFICE OF PETITIONS**

In re Application of	:	
Andersen et al.	:	DECISION DISMISSING
Application No. 09/872,623	:	PETITION
Filed: June 2, 2001	:	
Attorney Docket No. 010.00121	:	

This is a decision on the petition filed January 8, 2002, and resubmitted on October 24, 2003, which is being treated as a petition under 37 CFR 1.10(d), requesting that the above-identified application be accorded a filing date of June 1, 2001.

Applicants allege that the application was deposited in Express Mail service on June 1, 2001. However, the petition is not accompanied by a true copy of the Express Mail mailing label showing the "date-in" or any other official notation by the United States Postal Service (USPS) relied upon to show the date of deposit as required by 37 CFR 1.10.

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See §1.6(a).

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing, which establishes, to the satisfaction of the Commissioner that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in 'Express Mail Post Office to Addressee' service prior to the last scheduled pickup for that day." In addition, the showing **"must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."**

In support of the petition, applicants submitted a copy of their New Application Filing Checklist, containing an entry for a package bearing Express Mail label number as EJ900843346US (the same Express Mail label number found on the original application papers). The entry also identified the date as June 1, 2001, and the responsible attorney as Susan J. Braman. However, the

entry does not identify the place and time of deposit of the package in Express Mail service and the last scheduled pick-up for that date. Moreover, it is unclear whether the entry in the log came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Applicant must set forth the place and time of deposit of the package in Express Mail service and the last scheduled pick-up for that date. Moreover, applicant must submit an affidavit that the entry came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Accordingly, the petition is dismissed.

Any request for reconsideration of this decision should be filed within TWO (2) MONTHS of the mailing date of the decision to be considered timely. See 37 CFR 1.181(f). This time period may not be extended under 37 CFR 1.136.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Commissioner for Patents  
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By FAX:           (703) 872-9306  
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By hand:           2011 South Clark Place  
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                    Crystal Plaza Two, Lobby, Room 1B03  
                    Arlington, VA

The \$130.00 petition fee is unnecessary and will be refunded by treasury check.

The application is being forwarded to Technology Center 1600.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-5589.

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